



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4129 OF 2023

Kishor s/o Bhimrao Adhe
Aged about 51 years, Occ.Service,
R/o.Ward No.7, Near Wan Wasahat,
Near Jadgamba Niwas, At Post Tah.
Telhara, District – Akola

.. **Petitioner**

Versus

- 1]** State of Maharashtra, through its Secretary, General Administration Department, Mantralaya, Mumbai 400032
- 2]** Shikshan Seva Mandal, Ural (Bk.) Tah.Balapur, District-Akola, through its President
- 3]** Shri Shivshankar Secondary & Higher Secondary School, Ural Bk. Tah.Balapur, District- Akola, through its Head Master

.. **Respondents**

Mr. Mangesh V.Bute, Advocate for petitioner.

Ms. N.P.Mehta, Addl.G.P. for respondent No.1.

Mr. Sudhir Tayade and Mr.N.D.Sonare, Advocates for respondent Nos. 2 and 3.

CORAM : NITIN W. SAMBRE AND
ABHAY J. MANTRI, JJ.

DATED : 08/12/2023

ORAL JUDGMENT (Per Court : Nitin W. Sambre, J.)

Rule. Rule made returnable forthwith. Heard finally
by the consent of the learned counsel appearing for the parties.

(2) The challenge is to the communication dated 01/04/2021, wherein the respondent No.2 and 3 vide said communication has directed the employment of the petitioner to be placed on the supernumerary post.

(3) Mr.Mangesh Bute, learned counsel appearing for the petitioner submits that leave apart the fact that the petitioner has claimed that he belongs to Koli Mahadev, Scheduled Tribe, however, his appointment was from Open Category, as could be inferred from the appointment order and also from the Service Book. He would urge that the seniority lists upto the period 2020-2021 maintained by the respondent Nos.2 and 3 in categorical terms has shown the appointment of the petitioner from Open Category. That being so, the decision of the respondent Nos.2 and 3 of placing the candidature of the petitioner on supernumerary post is not sustainable, as the petitioner has never sought an appointment against the seat reserved for Scheduled Tribe.

(4) While countering the aforesaid submission, the counsel for respondent Nos.2 and 3 would urge that petitioner himself has stated in the application for appointment that, he belongs to Koli Mahadev, Scheduled Tribe. The said act has prompted the respondent Nos.2 and 3 to consider his claim from Scheduled Tribe category and

accordingly, upon he having failed to produce the caste validity certificate, his name is placed in the list of supernumerary post.

(5) The learned Additional Government Pleader would urge that in the facts and circumstances of the case, the Court to pass an appropriate order.

(6) At the outset, it is required to be noted that the petitioner's appointment as is reflected from the Service Book, the seniority lists which are produced at Annexure-'D' and 'E', categorically speaks about such appointment on 16/07/1998 was from the Open category, though he claimed to be belongs to Koli Mahadev, Schedule Tribe.

(7) The aforesaid fact clearly depicts that the respondent Nos.2 and 3 throughout the service of the petitioner has considered and treated the appointment of the petitioner from Open category, even if he is belonging to Koli Mahadev, Scheduled Tribe.

(8) In the aforesaid background, the claim putforth by the respondent Nos.2 and 3 that the petitioner's candidature should have been considered from the Scheduled Tribe category and as such he has to be put on the supernumerary post cannot be accepted or said to be justified.

(9) The aforesaid issue is rightly so claimed by Advocate Mr.Mangesh Bute to be supported by the Judgment of this Court in Writ Petition No.87 of 2020 and 88 of 2020 decided on 24/06/2022. That being so, the order impugned dated 01/04/2021 passed by the respondent Nos.2 and 3 is hereby quashed and set aside with a declaration that petitioner's appointment was from the Open category. The petition is accordingly allowed in above terms. No costs.

[ABHAY J. MANTRI, J.]

[NITIN W. SAMBRE, J.]

KOLHE